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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1905.**

**No. 494.**

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**E. L. WHITNEY, WARDEN OF THE IDAHO STATE PENI-  
TENTIARY, APPELLANT,**

**vs.**

**GEORGE DICK.**

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**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE NINTH CIRCUIT.**

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**FILED NOVEMBER 22, 1905.**

**(19996.)**



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vs.

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No. 1236.

United States Circuit Court of Appeals for the Ninth Circuit.

In the matter of the application of George Dick for a writ of habeas corpus and a writ of certiorari.

Petition for a writ of habeas corpus and a writ of certiorari.

Filed August 29, 1905.

F. D. MONCKTON, *Clerk.*

2 United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } Motion.  
and a writ of certiorari. }

*To the Hon. United States Circuit Court of Appeals for the Ninth Circuit:*

Now comes George W. Tannahill and F. E. Fogg, of counsel for George Dick, petitioner, and move this honorable court for leave to file the petition herewith of the said George Dick for a writ of habeas corpus and a writ of certiorari.

GEO. W. TANNAHILL,  
F. E. FOGG,  
*Of Counsel for Petitioner,*  
*Lewiston, Idaho.*

The petitioner respectfully consents and requests that in case writ is issued as requested that the same be made returnable at the term of court to be held either in Portland, Oregon, or Seattle, Washington.

Dated this 15' day of August, A. D. 1905.

GEO. W. TANNAHILL &  
F. E. FOGG,  
*Attorneys for Petitioner.*

3 United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } Petition.  
and a writ of certiorari. }

*To the Honorable United States Circuit Court of Appeals for the Ninth Circuit:*

Your petitioner, George Dick, a citizen of the United States and of the State of Oregon, respectfully shows: That he is unlawfully and unjustly held in custody, imprisoned, detained, and restrained of his liberty by E. L. Whitney, warden of the Idaho State penitentiary, at the Idaho State penitentiary, in the city of Boise, State of Idaho.

Your petitioner further states that on the 10th day of May, 1905, he was indicted by the grand jury in the United States District Court for the District of Idaho, Northern Division, a true of which indictment is hereto attached, marked Exhibit "A," and made a part of this petition.

That on the 13th day of May, 1905, your petitioner was arraigned in said United States district court upon said indictment, and by written demurrer filed in said court then objected to the jurisdiction of the said court, a true copy of which demurrer is hereto attached, marked Exhibit "B," and made a part of this petition.

4 That said demurrer was overruled and denied by the said District Court, and that thereafter, and on the 15th day of May, 1905, the said District Court, over the objection and protest of your petitioner against the jurisdiction of said court, proceeded with the trial of your petitioner under the said indictment.

That upon the said trial your petitioner objected to the jurisdiction of the said court in open court and to the introduction of any evidence upon the said trial, as follows:

That the indictment did not state facts sufficient to constitute any public offense, nor any offense against any law of the United States, and particularly that the said indictment did not allege any liquor was introduced into the Indian country or upon any Indian allotment from any place without such Indian country or without such Indian allotment; and further, that the facts stated in said indictment do not establish any violation of any law of the United States, and particularly do not establish a violation of section 2139, of the Revised Statute' as amended by 29 Statute at Large, page 506, and that said statute, in as far as it assumes to punish as an offense against the laws of the United States the bringing of liquor within the territory within the limits of this State not within the Indian country and not reserved by the Government for the exclusive use of the Indians, is unconstitutional and void; and for the further reason that this court has no jurisdiction over the subject-matter of the offense charged or attempted to be alleged in the indictment, or over the person of this defendant, for the reason above stated.

5 That upon the trial of the said cause, it appeared conclusively from the uncontroverted evidence that your petitioner was at the time mentioned in said indictment a Umatilla Indian; that he had an allotment in severalty upon the Umatilla Reservation, and had held a trust patent therefor for three years prior thereto.

That the only act done by your petitioner in reference to the pint of whiskey mentioned in the indictment was at and within the limits of the village of Culdesac; that said village of Culdesac was a duly incorporated municipality, namely, a village incorporated and existing under the laws of the State of Idaho; that no territory used for Government purposes or for Indian purposes was within the said village of Culdesac, and that said village of Culdesac is seven or eight miles outside of the exterior boundaries of the Indian school reservation.

That the only dominion or control that your petitioner exercised over the said whiskey, either directly or indirectly, was to purchase the same at the said village of Culdesac, in a certain building therein situated, and immediately deliver the same at the door of the said building, and within the said village of Culdesac, to one Te-we-Talkt, a Nez Perce Indian, who had therefore taken his land in severalty, and to whom a trust patent from the Government had issued therefor.

It was also admitted by the prosecution on the trial that the title to the lands upon which all of said transactions occurred had passed from

the Government, by patent under the town-site laws of the United States, to the probate judge of Nez Perce County, Idaho, in trust for the inhabitants.

That at the close of the evidence upon the said trial your petitioner, in further protest and objection to the jurisdiction of the said District

6 Court, requested that the court instruct the jury to acquit your petitioner; that said court denied said request, and submitted the case to the jury upon the following instructions:

"Gentlemen: The only instruction I need give you is this: If you find that the defendant had this bottle of whiskey upon him within the limits of what is known as the Nez Perce Indian Reservation, then you are to find him guilty of this charge. The charge, of course, is for introducing liquor into the reservation, but I instruct you that having it in his possession upon the reservation is conclusive. When and where he bought it is immaterial. That it was in his possession within the limits of the Indian reservation is sufficient. I instruct you, as a matter of fact, that Culklesac is within the limits of the reservation."

That thereupon your petitioner, further protesting and objecting to the jurisdiction of the court, excepted to the said instructions in open court, as follows:

"The defendant excepts particularly to that part of the instruction wherein the court instructs the jury that the village of Culklesac is a part of the Indian reservation, and substantially instructs the jury that the village of Culklesac is Indian country or Indian allotment within the meaning of the statute under which the indictment is laid; and further specifically objects to that portion of the instruction given by the court upon its own motion wherein the court instructs the jury that 'if they find from the evidence that there was liquor found in the possession of the defendant that is conclusive presumption that he is guilty of introducing liquor upon the reservation,' denying to the defendant a presumption of innocence of the charge against him."

7 That the jury, on the said 15th day of May, 1905, returned into court a verdict convicting your petitioner of the pretended offense charged in the said indictment, a copy of which said verdict is hereto attached, marked "Exhibit C," and made a part of this petition.

That on the 16th day of May, 1905, your petitioner was arraigned before the bar of the said District Court for sentence, and in further protest and objection to the jurisdiction of said court filed a motion in arrest of judgment of said District Court, a true copy of which said motion is hereto attached, marked "Exhibit D," and made a part of this petition.

That said motion was overruled and denied by said court.

That said court thereupon, upon the said 16th day of May, 1905, rendered its decision and judgment on said verdict of conviction, a true copy of which said judgment is hereto attached, marked "Exhibit E," and made a part of this petition.

That thereafter, and on the 16 day of May, 1905, the said District Court issued out of and under the seal of the said court, and delivered to the United States marshal of the said District Court, a warrant of commitment under said judgment, a true copy of which warrant of commitment is hereto attached, marked "Exhibit F," and made a part of this petition.

That thereafter and on the 18 day of May, 1905, your petitioner was delivered by the said United States marshal under the said commitment to E. L. Whitney, warden, and has ever since been confined in the aforesaid Idaho State Penitentiary by the said E. L. Whitney, warden, under said judgment and commitment.

8 Your petitioner further states and alleges that he is advised that the said United States District Court of the district of Idaho had no jurisdiction or lawful authority to cause the arrest of your petitioner, nor to proceed against him in the manner and form aforesaid, and that the said pretended indictment and trial of your petitioner thereon, the verdict of the jury, the judgment and sentence of the court, and the order and warrant whereby your petitioner was committed to the custody of the said United States marshal, and whereby he is held in custody by the said E. L. Whitney, warden, and restrained of his liberty as aforesaid, were and are, each and all of them, wholly without authority of law, in violation of law, and of the just rights of your petitioner, and void.

That the grand jury returning said indictment had no legal authority to inquire into the offense charged by reason of it not being within the legal jurisdiction of this court, in this, that it appears from said indictment:

That at the time charged in the said indictment there was no Indian country within the said county of Nez Perce, or within the jurisdiction of this court, namely, within the district of Idaho, known or designated as "The Nez Perce Indian Reservation;" that the jurisdiction of the United States over all the country and territory embraced within the former reservation known and designated as "The Nez Perce Indian Reservation" was, by the act of Congress of the United States admitting Idaho as a State into the Union, relinquished to the State of Idaho, excepting only that jurisdiction was retained in the United States over such Indian reservation until the Indians' title to the lands included within the boundary of such reservation should be extinguished; that the Indian or tribal title

9 to the lands therein contained has, since the admission of the said State, been extinguished by allotment of the said land in severalty to the individual Indians and by the purchase of the balance thereof by the United States, and that said allotments and the said purchase have been ratified by the public laws and acts of the Congress of the United States; and further, that the said former reservation known and designated as the Nez Perce Indian Reservation had, prior to the time of the commission of the acts mentioned in said indictment, been opened for occupation, settlement, and disposal under the general land laws of the United States by an act of Congress, and that the same had been, as a matter of general and public knowledge, prior to the time mentioned in said indictment, settled and appropriated by citizens of the State; that various town sites within the boundaries of said former reservation had been settled by citizens and that title thereto transferred from the United States to the inhabitants. Municipal governments, namely villages, had been organized and were in existence within the said boundaries of said former reservation, and that the same, nor any part thereof is not, and was not, at the times mentioned in said indictment, Indian country or lands reserved for the use and occupation of Indians, or occupied by



any Indians maintaining tribal relations or by any Indians or persons whomsoever, over which the United States in exercising or attempting to exercise, any authority or control in nature of guardianship of the person.

That the said district court had not jurisdiction over the person of your petitioner, nor over the offense stated or attempted to be stated in the said indictment, for the reason that it did not appear from the said indictment that the place where the said offense was alleged to have

10 been committed was within the jurisdiction of the State of Idaho; and further, that the law under which your petitioner was indicted, arraigned, convicted, and sentenced, and under which he is now imprisoned, as aforesaid, is unconstitutional and void, for the reason that the Congress of the United States had no power to pass a law providing for police regulations over the matters and things alleged in said indictment within the territory of the State of Idaho, and particularly that Congress was without power to pass such a law providing for such control over any land title of which had passed from the Government, by its patent, under the town-site laws, and within which a municipal corporation had been organized under the laws of the said State, and no part of which territory was used by the said Government for Government purposes or reserved for the use of any Indian or Indian tribe.

That, as is more fully and specifically set forth in the statement of the proceedings hereinbefore contained, and as appears by the exhibits hereto attached, the said district court was without jurisdiction in each and every proceeding therein whereby your petitioner was indicted, tried, sentenced, and committed to the said Idaho State Penitentiary, and that for all the reasons so urged in the said district court, and because of the facts hereinbefore shown, the said proceedings and judgment are wholly void.

For the foregoing reasons and for the further reason that the Hon. James H. Beatty, judge of the United States District Court for the district of Idaho, under whose jurisdiction your petitioner is now confined and restrained of his liberty, has passed upon all the questions presented and raised by this application, holding against the contention of

11 your petitioner, making such application to the said district judge a useless procedure and on account of the delays incident to appeal therefrom, your petitioner has no plain, speedy, or adequate remedy at law, therefore this application is presented direct to the Hon. United States Circuit Court of Appeals.

Wherefore, your petitioner prays that a writ of habeas corpus may be issued out of and under the seal of this honorable court, to be directed to the said E. L. Whitney, warden of the Idaho State Penitentiary, commanding him to have the body of your petitioner, together with a return of the date and cause of his detention, before this honorable court, on a day to be designated therein, and that a writ of certiorari issue, directed to the said United States District Court for the district of Idaho, commanding them to certify and send to this court on a certain day, to be therein designated, a full and complete transcript of the process, records, and proceedings by and before them touching the matter of your petitioner's said arrest, detention, and imprisonment, or that your petitioner may have such other or further full and adequate relief in the premises

as to this court may seem *properly*, and that he may be discharged from said custody and imprisonment. And your petitioner will ever pray.

GEORGE (his x mark) DICK,  
*Petitioner.*

Witness to mark:

MILTON G. CAGE,  
GEO. W. TANNAHILL.

GEORGE W. TANNAHILL and F. E. FOGG,  
*of Counsel for Petitioner.*

12 STATE OF IDAHO, *County of Ada, ss.*

George Dick, being duly sworn, deposes and says that he is the petitioner above named; that he had read the foregoing petition, by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge.

GEORGE (his x mark) DICK.

Witness to mark:

MILTON G. CAGE,  
GEO. W. TANNAHILL.

Subscribed and sworn to before me this 9th day of August, A. D. 1905.

[SEAL.]

MILTON G. CAGE,  
*Notary Public.*

Authority relied upon: In re Heff, reported in advance sheet U. S. C. R., May 15, 1905, page 506.

GEO. W. TANNAHILL,  
F. E. FOGG,  
*Attorneys for Petitioner.*

13

EXHIBIT "A."

In the District Court of the United States within and for the district of Idaho, May term, 1905. The United States of America vs. George Dick. Indictment. Violation sec. 2139 R. S. as amended 29 Stat., p. 506.

George Dick is accused by the grand jurors of the United States of America within and for the district of Idaho, having been duly summoned, empanelled, and sworn in the name and by the authority of the United States of America, upon their oaths, by this indictment, of the crime of introducing intoxicating liquors into the Indian country, committed as follows, to wit:

That the said George Dick, at the county of Nez Perce, within the district of Idaho and within the jurisdiction of this court, on the 15th day of March, A. D. 1905, then and there being did then and there unlawfully and feloniously introduce intoxicating liquors, to wit, one pint of whiskey (a more particular description of which intoxicating liquor is to the grand jurors unknown), into the Indian country, to wit, into and upon the Nez Perce Indian Reservation in the said county of Nez Perce, against the peace and dignity of the United States and con-

trary to the form, force, and effect of the statute in such cases made and provided.

N. M. RUICK,  
*United States Attorney, District of Idaho.*

O. A. CHRISTENSON,  
*Foreman of the United States Grand Jury.*

Names of witnesses examined before the United States grand jury upon finding the foregoing indictment: Te-we-Talkt, F. G. Mattoon, Watts-la-om-neen, Johnie Yo-Gay-Nil.

(Endorsed:) No. 565. Presented by the foreman in presence of the grand jury, and filed in open court this 10th day of May, 1905. A. L. Richardson, clerk.

A. O. CHRISTENSON,  
*Foreman Grand Jury.*

14 EXHIBIT "B."

In the District Court of the United States within and for the District of Idaho. The United States of America vs. George Dick. Demurrer.

Comes now the said defendant and demurs to the indictment on file herein and for cause and grounds of demurrer allege and shows to the court:

First. That the grand jury returning said indictment had no legal authority to inquire into the offense charged by reason of it not being within the legal jurisdiction of this court, in this, that it appears from said indictment:

A. That at the time charged in the said indictment there was no Indian country within the said county of Nez Perce or within the jurisdiction of this court, namely, within the district of Idaho, known or designated as "The Nez Perce Indian Reservation." That the jurisdiction of the United States over all the country and territory embraced within the former reservation known and designated as "The Nez Perce Indian Reservation" was, by the act of Congress of the United States admitting Idaho as a State into the Union, relinquished to the State of Idaho, excepting only that jurisdiction was retained in the United States over such Indian reservation until the Indians' title to the lands included within the boundary of such reservation should be extinguished; that the Indian or tribal title to the lands therein contained has, since the admission of the said State, been extinguished by allotment of the said land in severalty to the individual Indians and by the purchase of the balance thereof by the United States, and that said allotments and the said purchase have been ratified by the public laws and acts of the Congress of the United States, and, further, that the

15 said former reservation, known and designated as the Nez Perce Indian Reservation had, prior to the time of the commission of the acts mentioned in said indictment, been opened for occupation, settlement, and disposal under the general land laws of the United States by an act of Congress, and that the same had been, as a matter of general and public knowledge, prior to the time mentioned in said indictment, settled and appropriated by citizens of the State; that various town sites within the boundaries of said former reservation had

been settled by citizens and that title thereto transferred from the United States to the inhabitants. Municipal governments, namely, villages, had been organized and were in existence within said boundaries of said former reservation and that the same, nor any part thereof, is not, and was not, at the times mentioned in said indictment, Indian country or lands reserved for the use and occupation of Indians, or occupied by any Indian maintaining tribal relations or by any Indians or persons whomsoever, over which the United States is exercising, or attempting to exercise, any authority or control in nature of guardianship of the person.

Second. That said indictment does not substantially conform to the requirements of sections 7677 and 7679 of the Revised Statutes of Idaho in that the facts and acts constituting the offense charged are not stated so as to enable the defendant to know what is intended, and that the said indictment is uncertain in its statement of particular circumstances of the offense charged for the reason that the words "Nez Perce Indian Reservation" is not the designation of any particular and definite territory such as to enable the defendant to determine whether or not the place

attempted to be designated is within or upon lands or territories reserved by the Government of the United States for the use of Indians, or over which the Government has jurisdiction in its administration of Indian affairs, nor can the defendant determine whether or not the place to which it is charged that the defendant introduced the liquor was an Indian allotment, of which the title is held in trust by the Government.

Third. That the facts stated in said indictment do not constitute a public offense and particularly that the facts stated in said indictment are not sufficient to constitute any offense against the laws of the United States, nor any offense within the jurisdiction of this court.

Dated this 11th day of May, A. D. 1905.

F. E. FOGG and  
GEO. W. TANNAHILL,

*Attorneys for Defendant, residing at Lewiston, Idaho.*

(Endorsed:) Filed May 13, 1905. A. L. Richardson, clerk.

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"C."

United States District Court, Northern division, district of Idaho.

THE UNITED STATES OF AMERICA	} Verdict.
<i>vs.</i>	
GEORGE DICK.	

We, the jury in the above-entitled cause, find the defendant guilty as charged in the indictment.

C. A. HAGEN,  
*Foreman.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

I, A. L. Richardson, clerk of the United States District Court for the district of Idaho, do hereby certify that the foregoing copy of verdict in case No. 565, The United States vs. George Dick, has been by me compared with the original and that it is a correct transcript therefrom, and

of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have set my hand and affixed the seal of said court in said district this 9th day of August, 1905.

[SEAL.]

A. L. RICHARDSON, *Clerk*.

(Endorsed:) No. 565, U. S. District Court, Northern division, district of Idaho. The United States vs. George Dick. Verdict. Filed May 15, 1905. A. L. Richardson, clerk.

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EXHIBIT "D."

In the District Court of the United States in and for the district of Idaho. The United States of America vs. George Dick. Motion in arrest of judgment.

Comes now the defendant, George Dick, and moves the court that judgment be arrested and sentence be not passed in this action upon his conviction by the verdict of the jury, under his plea of "Not guilty" herein, for the reasons:

1st. That the indictment herein does not state facts sufficient to constitute a public offense, nor does it state facts sufficient to constitute any offense or any violation of any law of the United States.

2d. That this court has not jurisdiction over the person of this defendant nor over the offense stated or attempted to be stated in the said indictment, for the reason that it does not appear from the said indictment that the place where the said offense charged to have been committed is within the jurisdiction of the United States, but to the contrary it affirmatively appears from said indictment that the place where said offense is alleged to have been committed is within the jurisdiction of the State of Idaho; and further, that the law under which this defendant was indicted and arraigned is unconstitutional and void, for the reason that the Congress of the United States has no power to pass a law providing for police regulation over the matters and things alleged in said indictment, within the territory of the State of Idaho or over the place where said offense is said to have been committed.

Wherefore the defendant prays that judgment upon the said verdict and conviction be arrested and that he be discharged.

19 Dated this 16th day of May, A. D. 1905.

GEO. W. TANNAHILL and

F. E. FOGG,

*Attorneys for Defendant.*

(Endorsed:) Filed May 16, 1905. A. L. Richardson, clerk.

In the District Court of the United States for the Northern division  
of the district of Idaho.

May term, A. D. 1905.

THE UNITED STATES	}	No. 565. Convicted of introducing intoxicating liquors into the Indian country.
<i>against</i>		
GEORGE DICK.		

Present: Hon. Jas. H. Beatty, judge.

Now, on this 16th day of May, 1905, the United States district attorney, with the defendant and his counsel, F. E. Fogg, esqr., came into court; the defendant was duly informed by the court of the nature of the indictment found against him for the crime of introducing intoxicating liquor into the Indian country, committed on the 15th day of March, A. D. 1905; of his arraignment and plea of "Not guilty as charged in said indictment;" of his trial and the verdict of the jury on the 15 day of May, A. D. 1905, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none; and no sufficient cause being shown or appearing to the court.

Now, therefore, the said defendant having been convicted of the crime of introducing intoxicating liquor into the Indian country.

It is hereby considered and adjudged that the said defendant, George Dick, do pay a fine of one hundred dollars and the costs of this action taxed at one hundred eight and 40/100 dollars, and that he stand committed until said fine is paid.

21 And that he be imprisoned and kept in the penitentiary of the State of Idaho, at Boise, Idaho, for the term of one year and ten days; and it is further ordered and adjudged that said defendant be and is hereby remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

UNITED STATES OF AMERICA, *District of Idaho, ss:*

I, A. L. Richardson, clerk of the United States District Court for the district of Idaho, do hereby certify that the foregoing copy of judgment in case No. 565, The United States vs. George Dick, has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original as the same appears of record and on file at my office and in my custody.

In testimony whereof I have set my hand and affixed the seal of said court in said district this 9th day of August, 1905.

[SEAL.]

A. L. RICHARDSON, *Clerk.*

22

"F."

In the District Court of the United States for the District of Idaho,  
Northern Division.

THE UNITED STATES }  
vs. } No. 565. For violation of section 2139, R. S.  
GEORGE DICK. }

UNITED STATES OF AMERICA, *District of Idaho, ss:*

The President of the United States to the marshal of the district of Idaho, or to his deputy, and to the keeper of either of the jails in our said district, greeting:

Whereas at the May, 1905, term of the above-entitled court George Dick was duly convicted of the crime of introducing intoxicating liquor into the Indian country contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America, for which offense he hath this day been sentenced by our said court to pay a fine of one hundred /100 dollars, and the costs of this action taxed at one hundred eight & 40/100 dollars, and to be imprisoned in the penitentiary of the State of Idaho, at Boise, Idaho, and to be there kept for the term of one year & ten days, and to stand committed till this sentence be performed.

Now, this is to command you, the said marshal or deputy, to take and keep and safely deliver the said defendant into the custody of the keeper or warden in charge of said prison forthwith.

23 And this is to command you, the said keeper or warden in charge of the said prison, to receive from the said marshal or deputy the said defendant convicted and sentenced as aforesaid, and him keep and imprison in accordance with said sentence, or till he be otherwise discharged by law. Hereof fail not at your peril.

Witness the honorable Jas. H. Beatty, judge of our said court, and the seal thereof affixed at Moscow, in said district, this May 16, 1905.

[SEAL.]

A. L. RICHARDSON, *Clerk.*

I hereby certify that I received the within commitment at Moscow, Idaho, on May 16th, 1905, and that I executed the same by delivering George Dick, the defendant named therein, into the custody of the warden of the Idaho State Penitentiary at Boise, Idaho, on May 18th, 1905, as within I am commanded.

[SEAL.]

R. ROUNDS, *U. S. Marshal.*By W. R. BRYON, *Deputy.*

UNITED STATES OF AMERICA, *District of Idaho, ss:*

I, A. L. Richardson, clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of commitment in case No. 565, The United States vs. George Dick, has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

24 In testimony whereof, I have set my hand and affixed the seal of said court in said district this 9th day of August, 1905.

[SEAL.]

A. L. RICHARDSON, *Clerk.*

(Endorsed:) Copy. No. 565. In the District Court of the United States for the district of Idaho. The United States vs. George Dick. Commitment. Returned and filed. May 23, 1905. A. L. Richardson, clerk.

(Endorsed:) No. 1236. United States Circuit Court of Appeals for the Ninth circuit. In the matter of the application of George Dick for a writ of habeas corpus and a writ of certiorari. Petition for a writ of habeas corpus and a writ of certiorari. Filed August 29, 1905. F. D. Monckton, clerk.

25 United States Circuit Court of Appeals for the Ninth Circuit.

In re George Dick. Application for a writ of habeas corpus & writ of certiorari.

Return to writ of certiorari.  
Filed Sep. 15, 1905.

FRANK D. MONCKTON, *Clerk*,  
By MEREDITH SAWYER,  
*Deputy Clerk*.

26

*Indictment.*

In the District Court of the United States within and for the District of Idaho. May term, 1905.

THE UNITED STATES OF AMERICA	} Indictment. Violation sec. 2139, R. S., as amended 29 Stat., p. 506. Introducing liquor on Indian reservation.
<i>vs.</i>	
GEORGE DICK.	

George Dick is accused by the grand jurors of the United States of America, within and for the district of Idaho, having been duly summoned, empannelled, and sworn in the name and by the authority of the United States of America, upon their oaths, by this indictment, of the crime of introducing intoxicating liquors into the Indian country, committed as follows, to wit:

That the said George Dick, at the county of Nez Perces, within the district of Idaho, and within the jurisdiction of this court, on the 15th day of March, 1905, then and there being, did then and there unlawfully and feloniously introduce intoxicating liquors, to wit, one pint of whiskey (a more particular description of which intoxicating liquor is to the grand jurors unknown) into the Indian country, to wit, into and upon the Nez Percé Indian Reservation in the said county of Nez Perces, against the peace and dignity of the United States, and contrary to the form, force, and effect of the statute in such cases made and provided.

N. M. RUICK,  
*United States District Attorney, District of Idaho.*

A. O. CHRISTENSON,  
*Foreman of the Grand Jury.*



26½ Names of witnesses examined before the United States grand jury upon finding the foregoing indictment. Te-we-talkt, F. G. Mattoon, Wates-la-on-neen, Johnie-Gio-hoy-nit.

(Endorsed:) No. 565. In the District Court of the United States within and for the District of Idaho. The United States of America vs. George Dick. Indictment. Violation Sec. 2139, R. S., as amended, 29 Stat., p. 506. Presented by the foreman in the presence of the grand jury and filed in open court this 10th day of May, 1905. A. L. Richardson, clerk. A. O. Christenson, foreman grand jury.

27 *Demurrer.*

In the District Court of the United States within and for the District of Idaho.

THE UNITED STATES OF AMERICA }  
*vs.* } *Demurrer.*  
 GEORGE DICK. }

Comes now the said defendant and demurs to the indictment on file herein and for cause and grounds of demurrer alleges and shows to the court:

First. That the grand jury returning said indictment had no legal authority to inquire into the offense charged, by reason of it not being within the legal jurisdiction of this court, in this, that it appears from said complaint:

a. That at the time charged in the said indictment there was no Indian country within the said county of Nez Perce or within the jurisdiction of this court, namely, within the district of Idaho, known or designated as "The Nez Perce Indian Reservation." That the jurisdiction of the United States over all the country and territory embraced within the former reservation known and designated as "The Nez Perce Indian Reservation" was, by the act of the Congress of the United States admitting Idaho as a State into the Union, relinquished to the State of Idaho, excepting only that jurisdiction was retained in the United States over such Indian reservation until the Indians' title to the lands included within the boundary of such reservation should be extinguished. That the Indian or tribal title to the lands therein contained has, since the admission of the said State, been extinguished by allotment of  
 28 the said lands in severalty to the individual Indians and by the purchase of the balance thereof by the United States, and that said allotments and the said purchase have been ratified by the public laws and acts of the Congress of the United States; and further, that the said former reservation known and designated as the Nez Perce Indian Reservation had, prior to the time of the commission of the acts mentioned in said indictment, been opened for occupation, settlement, and disposal under the general land laws of the United States by an act of Congress, and that the same had been, as a matter of general and public knowledge, prior to the time mentioned in said indictment, settled and appropriated by citizens of the State. That various town sites within the boundaries of said former reservation had been settled by citizens and

that title thereto transferred from the United States to the inhabitants. Municipal governments, namely, villages, had been organized and were in existence within the said boundaries of said former reservation and that the same, nor any part thereof, is not, and was not, at the times mentioned in said indictment, Indian country, or lands reserved for the use and occupation of Indians or occupied by any Indian maintaining tribal relations or by any Indians or persons whomsoever over which the United States is exercising, or attempting to exercise, any of the authority or control in nature of the guardianship of the person.

Second. That said indictment does not substantially conform to the requirements of sections 7677 and 7679 of the revised statutes of Idaho in that the facts and acts constituting the offense charged are not stated so as to enable the defendant to know what is intended, and that

29 the said indictment is uncertain, and its statement of particular circumstances of the offense charged for the reason that the words "Nez Perce Indian Reservation" is not the designation of any particular and definite territory such as to enable the defendant to determine whether or not the place attempted to be designated is within or upon lands or territories reserved by the Government of the United States for the use of Indians, or over which the Government has jurisdiction in its administration of Indian affairs, nor can the defendant determine whether or not the place to which it is charged that the defendant introduced the liquor was an Indian allotment, of which the title is held in trust by the Government.

Third. That the facts stated in said indictment do not constitute a public offense and particularly that the facts stated in said indictment are not sufficient to constitute any offense against the laws of the United States, nor any offense within the jurisdiction of this court.

Dated this 11th day of May, A. D. 1905.

FOGG & NUGENT,

*Attorneys for Defendant, residing at Lewiston, Idaho.*

(Endorsed:) No. 565. In the District Court of the United States within and for the District of Idaho. The United States of America vs. George Dick. Demurrer. Filed May 11th, 1905. A. L. Richardson, clerk.

30

*Defendant's requests.*

In the United States District Court for the District of Idaho.

UNITED STATES OF AMERICA }  
vs. }  
GEORGE DICK. }

No. 1.

Refused. I instruct you, gentlemen, that notwithstanding you may find from the evidence that the defendant, George Dick, had intoxicating liquor in his possession within the Nez Perce Indian Reservation, or Indian country, still if you further find from the evidence in this case that the defendant did not introduce said liquor into the Nez Perce Indian Reservation, or Indian country, or upon an Indian allotment, then your verdict must be not guilty.

## No. 2.

Refused.  
And I further instruct you that unless you find from the evidence in the case that the defendant brought the said liquor from a point or place from without the limits of the Nez Perce Indian Reservation, or Indian country, into the boundaries of the said Indian reservation, or Indian country, then your verdict must be not guilty.

## No. 3.

Refused.  
I instruct you, gentlemen, to find the defendant, George Dick, not guilty.

(Endorsed :) No. 565. U. S. District Court, District of Idaho. The United States vs. George Dick. Defendant's requests. Filed May 15th, 1905. A. L. Richardson, clerk.

31

*Verdict.*

United States District Court, Northern Division, District of Idaho.

THE UNITED STATES }  
vs. } Verdict.  
GEORGE DICK. }

We, the jury in the above entitled cause, find the defendant guilty as charged in the indictment.

C. A. HAGEN,  
*Foreman.*

(Endorsed :) No. 565. U. S. District Court, Northern Division, District of Idaho. The United States vs. George Dick. Verdict. Filed May 15th, 1905. A. L. Richardson, clerk.

32

*Motion in arrest of judgment.*

In the District Court of the United States, in and for the District of Idaho.

THE UNITED STATES OF AMERICA }  
vs. } Motion in arrest of judgment.  
GEORGE DICK. }

Comes now the defendant, George Dick, and moves the court that judgment be arrested and sentence be not passed in this action upon his conviction, upon verdict of the jury herein, for the reasons:

1st. That the indictment herein does not state facts sufficient to constitute a public offense, nor does it state facts sufficient to constitute any offense or any violation of any laws of the United States.

2nd. That this court has not jurisdiction over the person of this defendant nor over the offense stated or attempted to be stated in the said indictment, for the reason that it does not appear from the said

indictment that the place where the said offense charged to have been committed is within the jurisdiction of the United States; but, to the contrary, it affirmatively appears from said indictment that the place where said offense is alleged to have been committed is within the jurisdiction of the State of Idaho, and further, that the law under which this defendant was indicted and arraigned is unconstitutional and void, for the reason that the Congress of the United States had no power to pass a law providing for police regulations over the matters and things  
 33 alleged in said indictment within the territory of the State of Idaho or over the place where said offense is said to have been committed.

Wherefore the defendant prays that judgment upon the said plea and conviction of "Guilty" be arrested and that he be discharged.

Dated this 13th day of May, A. D. 1905.

F. E. FOGG & G. W. TANNABILL,

*Attorneys for Defendant.*

(Endorsed:) No. 565. In the District Court of the United States in and for the District of Idaho. The United States of America vs. George Dick. Motion in arrest of judgment. Filed May 16, 1905. A. L. Richardson, clerk.

34 *Order extending time to settle bill of exceptions.*

In the District Court of the United States in and for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA	}	Order extending time to settle bill of exceptions.
vs.		
GEORGE DICK.		

It appearing to the court that additional time is necessary for the defendant to prepare and present a bill of exceptions taken during the trial for settlement:

It is therefore ordered that the defendant's time for preparing, presenting, and serving upon the district attorney a bill of exceptions thereof upon the trial of the cause, including exceptions taken to the overruling of the demurrer and exceptions to the order of the court overruling and denying defendant's motion and arrest of judgment and all the exceptions taken upon the trial, and the admission and rejection of evidence, and to the instructions of the court, be extended for sixty days from the date of this order.

Done in open court this 16th day of May, A. D. 1905.

JAS. H. BEATTY,

*Judge.*

(Endorsed:) No. 565. In the District Court of the United States, District of Idaho, Northern Division. The United States of America vs. George Dick. Order extending time to settle bill of exceptions. Filed May 16, 1905. A. L. Richardson, clerk.

35

*Journal entries.*

At a stated term of the District Court of the United States for the District of Idaho, Northern Division, held at Moscow, Idaho, on Wednesday the 10th day of May, 1905:

Present: Hon. Jas. H. Beatty, judge.

THE UNITED STATES	}	No. 565. Introducing liquor.
<i>vs.</i>		
GEORGE DICK.		

On this day the defendant herein was brought into court to be arraigned upon the true bill of indictment heretofore presented against him by the grand jury. Being asked if George Dick was his true name, the defendant stated that it was. The formal reading of the indictment was waived and defendant furnished with a true copy thereof by order of court at the expense of the United States. Being asked for his plea, the defendant pleaded that he is not guilty of the offense charged in the indictment.

Saturday, the 13th day of May, 1905.

THE UNITED STATES	}	No. 565. Introducing liquor.
<i>vs.</i>		
GEORGE DICK.		

On this day the court announced its decision upon the demurrer to the indictment herein, heretofore argued and submitted. Ordered that said demurrer be and the same is hereby overruled.

36

Monday, the 15th day of May, 1905.

THE UNITED STATES	}	No. 565. Introducing liquor.
<i>vs.</i>		
GEORGE DICK.		

Now on this day this cause came on regularly to be heard and tried before the court and jury, N. M. Ruick, U. S. district attorney, appearing as counsel for the plaintiff, and F. E. Fogg and Geo. W. Tannahill, esqrs., on behalf of defendant, said defendant being in court in person. The clerk under direction of the court proceeded to draw from the jury box the names of twelve persons, one at a time, to serve as a jury in said cause, and the following are the names of the persons drawn from the box, sworn on voir dire, passed upon, accepted by the counsel for the respective parties, and sworn by the clerk to well and truly try said cause and a true verdict render therein according to the law and the evidence, to wit: Warren P. Hunt, Jno. E. Randall, H. C. Grice, J. L. Miller, W. H. Simpson, Geo. Brewster, Frank Hart, Geo. P. Thompson, Jesse Reeves, C. A. Hagen, R. S. Mathews, & D. H. Robinson.

The clerk read the indictment to the jury and stated the defendant's plea. Ed. Raboin was sworn as interpreter.

The following named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit: Te-we-talkt, through the interpreter, F. G. Matoon, John Dickson, through the interpreter, John-Yo-hoy-wit, through the interpreter, and Ed. Raboin, and the plaintiff rests.

37 George Dick was sworn and examined on his own behalf, and the defense rests and the evidence closed. The said cause was thereupon submitted without argument and said jury, after being instructed by the court, retired to their room to consider of their verdict in charge of an officer of the court duly qualified.

Now came the jury all called and found to be present the respective attorneys of record and the defendant in person being in court. Being asked if they had agreed upon a verdict they, through their foreman, presented their written verdict in the words following, to wit:

"United States District Court, Northern Division, District of Idaho.

"THE UNITED STATES OF AMERICA	} Verdict.
vs.	
GEORGE DICK.	

"We the jury in the above-entitled cause find the defendant guilty as charged in the indictment.

"C. A. HAGEN, Foreman."

Tuesday, the 16th day of May, 1905.

THE UNITED STATES	} No. 565. Introducing liquor.
vs.	
GEORGE DICK.	

Now came the defendant in person and by his counsel, F. E. Fogg, esqr., and thereupon the defendant's motion in arrest of judgment  
38 herein was submitted to the court, and upon consideration it is ordered that said motion be, and the same is hereby, denied, to which ruling the said defendant by his said counsel then and there excepted in due form of law, and it is ordered that said defendant do pay a fine of \$100.00 and costs, and that he be imprisoned in the penitentiary of the State of Idaho, at Boise, Idaho, for the term of one year and ten days.

It is further ordered that execution be stayed herein for a period of sixty days, or during the further order of the court or judge thereof upon the deposit with the clerk of \$400.00 cash as security for defendant's appearance when ordered by the court or judge.

In the District Court of the United States for the Northern District of the District of Idaho. May term, A. D. 1905.

THE UNITED STATES	} No. 565. Convicted of introducing intoxicating
against	
GEORGE DICK.	

liquors into the Indian country.

Present: Hon. Jas. H. Beatty, Judge.

Now, on this 16th day of May, 1905, the United States district attorney, with the defendant and his counsel, F. E. Fogg, esqr., came into court; the defendant was duly informed by the court of the nature of the indictment found against him for the crime of introducing intoxicating liquors into the Indian country committed on the 15th day of March, A. D. 1905, of his arraignment and plea of "Not guilty as

charged in said indictment," of his trial and the verdict of the jury on the 15th day of May, A. D. 1905, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court.

Now, therefore, the said defendant having been convicted of the crime of introducing intoxicating liquors into the Indian country

It is hereby considered and adjudged that the said defendant, George Dick, do pay a fine of one hundred (100) dollars, and the costs of this action taxed at one hundred eight and 40/100 dollars, and that he stand committed until said fine is paid.

And that he be imprisoned and kept in the penitentiary of the State of Idaho, at Boise, Idaho, for the term of one year and ten days; and it is further ordered and adjudged that said defendant be, and is hereby, remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

(Endorsed:) In the District Court of the United States for the District of Idaho. Judgment roll No. 565. The United States vs. George Dick. Filed May 15th, 1905. A. L. Richardson, clerk.

40      *Notice of intention to move for a new trial.*

In the District Court of the United States, in and for the District of Idaho, Northern Division, May term, 1905.

THE UNITED STATES OF AMERICA,	}	Notice of intention to move for a new trial.
plaintiff,		
<i>vs.</i>		
GEORGE DICK, DEFENDANT.	}	

To the plaintiff above named, and to N. M. Ruick, district attorney, and by virtue thereof, attorney for plaintiff, and to each of you,

Take notice, that the defendant above named intends to and will move the above-entitled court to vacate and set aside the verdict rendered in the above-entitled cause, on the 15th day of May, A. D. 1905, and to grant a new trial of said cause upon the following grounds, to wit:

1.

Insufficiency of the evidence to justify the verdict and that the same is against law.

2.

Errors of law occurring at the trial and excepted to by the defendant.

3.

41      Errors of law occurring in the instructions of the court, wherein and whereby the court failed to instruct the jury as to the law, depriving the defendant of having presented to the jury all of the

issues in the case, and thereby preventing the defendant from having a fair and impartial trial.

## 4.

Errors of law in overruling the defendant's demurrer to the indictment herein, and overruling the defendant's motion in arrest of judgment, and in sentencing the defendant upon the indictment and the verdict returned and filed in said cause.

Said motion will be made and based upon a statement of the case to be hereafter prepared and served, settled and filed, upon the indictment heretofore filed herein, and upon the defendant's motion in arrest of judgment, the minutes of the clerk, and the files and records in the above-entitled cause.

F. E. FOGG,  
GEO. W. TANNAHILL,

*Attorneys for Defendant, residing at Lewiston, Idaho.*

(Endorsed:) No. 565. In the District Court of the United States, Northern Division, District of Idaho. The United States of America, plaintiff, vs. George Dick, defendant. Notice of intention to move for a new trial. Filed May 24th, 1905. A. L. Richardson, clerk. By H. C. Shaver, deputy.

## 42

*Motion for a new trial.*

In the District Court of the United States, in and for the District of Idaho, Northern Division. May term, 1905.

THE UNITED STATES OF AMERICA,	}	Motion for a new trial.
plaintiff,		
<i>vs.</i>		
GEORGE DICK, DEFENDANT.		

Comes now the defendant above named, pursuant to notice heretofore given, and moves the court that the verdict, rendered in the above-entitled cause on May 15, 1905, be set aside and vacated, and a new trial granted therein upon the following grounds:

## 1.

Insufficiency of the evidence to justify the verdict, and that the same is against law.

## 2.

Errors of law occurring at the trial and excepted to by the defendant.

## 3.

Errors of law occurring in the instructions of the court wherein and whereby the court failed to instruct the jury as to the law, depriving the defendant of having presented to the jury all of the issues in the case, and thereby preventing the defendant from having a fair and impartial trial.



43

4.

Errors of law in overruling the defendant's demurrer to the indictment herein and in overruling defendant's motion in arrest of judgment and in sentencing the defendant upon the indictment and the verdict returned and filed in said cause.

This motion will be made and based upon a statement of the case to be hereafter prepared and served, the indictment heretofore filed herein, defendant's motion in arrest of judgment, the minutes of the clerk, and the files and records in the above-entitled cause.

F. E. FOGG and  
GEO. W. TANNAHILL,

*Attorneys for Defendant, residing at Lewiston, Idaho.*

(Endorsed:) No. 565. In the District Court of the United States, in and for the District of Idaho, Northern Division. May term, 1905. The United States of America, plaintiff, vs. George Dick, defendant. Motion for a new trial. Filed May 24th, 1905. A. L. Richardson, clerk. By H. C. Shaver, deputy.

44

*Bill of exceptions.*

In the United States District Court for the District of Idaho, Northern Division. May term, 1905.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Bill of exceptions and statement of case.
vs. GEORGE DICK, DEFENDANT.	

Be it remembered that upon the 10th day of May, 1905, the defendant was indicted by the grand jury in the above-entitled court, charged with violation of section 2139, R. S., U. S., amended by 29 Statute, page 506, which indictment is as follows:

"In the District Court of the United States, within and for the District of Idaho. May term, 1905. The United States of America vs. George Dick. Indictment. Violation sec. 2139, R. S., as amended 29 Stat., p. 506.

"George Dick is accused by the grand jurors of the United States of America, within and for the District of Idaho, having been duly summoned, empanelled and sworn in the name and by the authority of the United States of America, upon their oaths, by this indictment, of the crime of introducing intoxicating liquors into the Indian country, committed as follows, to wit:

"That the said George Dick at the county of Nez Perce, within the District of Idaho and within the jurisdiction of this court, on the 15th day of March, A. D. 1905, then and there being, did then and there unlawfully and feloniously introduce intoxicating liquors, to wit, one  
45 pint of whiskey (a more particular description of which intoxicating liquor is to the grand jurors unknown), into the Indian country, to wit, into and upon the Nez Perce Indian Reservation in the said county of Nez Perce; against the peace and dignity of the United

States and contrary to the form, force, and effect of the statute in such cases made and provided.

N. M. RUICK,  
*United States District Attorney, District of Idaho.*

A. O. CHRISTENSON,  
*Foreman of the United States Grand Jury.*

Names of witnesses examined before the United States grand jury upon finding the foregoing indictment: Te-we-Talkt, Watts-la-om-neen, Johnie Yo-Gay-Nil, F. G. Matoon.

(Endorsed:) No. 565. Presented by the foreman in presence of the grand jury and filed in open court this 10th day of May, 1905. A. L. Richardson, clerk.

A. O. CHRISTENSON,  
*Foreman Grand Jury.*

Be it further remembered that thereafter, on the 13th day of May, 1905, the defendant filed in said court his demurrer to said indictment, which demurrer is as follows:

"In the District Court of the United States within and for the District of Idaho. The United States of America vs. George Dick.

"Comes now the said defendant and demurrs to the indictment on file herein and for cause and grounds of demurrer alleges and shows to the court:

"First. That the grand jury returning said indictment had no  
46 legal authority to inquire into the offense charged by reason of it not being within the legal jurisdiction of this court, in this, that it appears from said complainant:

"A. That at the time charged in the said indictment there was no Indian country within the said county of Nez Perce or within the jurisdiction of this court, namely, within the district of Idaho, known or designated as 'The Nez Perce Indian Reservation'; that the jurisdiction of the United States over all the country and territory embraced within the former reservation known and designated as 'The Nez Perce Indian Reservation' was, by the act of Congress of the United States admitting Idaho as a State into the Union, relinquished to the State of Idaho, excepting only that jurisdiction was retained in the United States over such Indian reservation until the Indians' title to the land included within the boundaries of such reservation should be extinguished; that the Indian or tribal title to the lands therein contained has, since the admission of the said State, been extinguished by allotment of the said land in severalty to the individual Indians and by the purchase of the balance thereof by the United States and that said allotments and the said purchase have been ratified by the public laws and acts of the Congress of the United States, and, further, that the said former reservation known and designated as 'The Nez Perce Indian Reservation' had, prior to the time of the commission of the acts mentioned in said indictment, been open for occupation, settlement, and disposal under the general land laws of the United States by an act of Congress and that the same had been, as a matter of general and public knowledge, prior to the time mentioned in said indictment, settled and appropriated by citizens of the State; that various town sites within the boundaries of said former reservation had been settled by citizens and that title thereto transferred from the United

47 States to the inhabitants. Municipal governments, namely, villages, had been organized and were in existence within the boundaries of said former reservation, and that the same, nor any part thereof, is not, and was not, at the times mentioned in said indictment, Indian country or lands reserved for the use and occupation of Indians, or occupied by any Indians maintaining tribal relations or by any Indians or persons whomsoever over which the United States is exercising, or attempting to exercise, and of the authority or control, in nature of the guardianship of the person.

"Second. That said indictment does not substantially conform to the requirements of sections 7677 and 7679 of the revised statutes of Idaho in that the facts and acts constituting the offense charged are not stated so as to enable the defendant to know what is intended, and that the said indictment is uncertain in its statements of particular circumstances of the offense charged for the reason that the words 'Nez Perce Indian Reservation' is not the designation of any particular and definite territory such as to enable the defendant to determine whether or not the place attempted to be designated is within or upon lands or territories reserved by the Government of the United States for the use of Indians, or over which the Government has jurisdiction in its administration of Indian affairs, nor can the defendant determine whether or not the place to which it is charged that the defendant introduced the liquor was an Indian allotment, of which the title is held in trust by the Government.

48 "Third. That the facts stated in said indictment do not constitute a public offense and particularly that the facts stated in said indictment are not sufficient to constitute any offense against the laws of the United States, or any offense within the jurisdiction of this court.

"Dated this 11th day of May, A. D. 1905.

F. E. FOGG & GEO. W. TANNAHILL,  
*Attorneys for Defendant, residing at Lewiston, Idaho.*

(Endorsed:) Filed May 13, 1905. A. L. Richardson, clerk.

Be it further remembered that thereafter said demurrer was duly argued and submitted to the court for decision and the court then and there, on the 13th day of May, 1905, overruled said demurrer and made and entered its order denying the same, which is as follows:

"In the United States District Court of the District of Idaho, Northern Division, May term, 1905. The United States of America, plaintiff, vs. George Dick, defendant. Order overruling demurrer.

"This cause came on to be heard this 13th day of May, 1905, at 3.00 o'clock p. m., upon the defendant's demurrer to the indictment herein, F. E. Fogg and Geo. W. Tannahill appearing for defendant in support of said demurrer and N. M. Ruick, district attorney, appearing in opposition thereto. After hearing arguments of respective counsel and being fully advised in the premises the court overruled said demurrer.

"Now, therefore, by reason of the law and the premises aforesaid the court orders that said demurrer be and the same hereby is overruled and it is so ordered, to which defendant excepted and exception allowed.

JAS. H. BEATTY,  
*District Judge.*"

(Endorsed:) Filed May 13th, 1905. A. L. Richardson, clerk.

49 Be it further remembered that the defendant, George Dick, then and there excepted to the ruling of the court in overruling said demurrer, which exception was at the time allowed.

Be it further remembered that thereafter, and on the 13th day of May, 1905, and after the filing of said demurrer and the order overruling the same, the defendant, reserving his exceptions to said demurrer and to the jurisdiction of the court as urged in said demurrer, pleaded not guilty to the said charge in said indictment.

Be it further remembered that thereafter and on the 15th day of May, 1905, this cause came on regularly for trial upon said indictment and the defendant's plea of not guilty thereto, whereupon a jury was regularly sworn and empanelled to try said cause, N. M. Ruick, esqr., United States District Attorney, appearing for the prosecution, and F. E. Fogg and Geo. W. Tannahill, esqrs., appearing as attorneys for the said defendant.

Be it further remembered that thereupon the following proceedings, and none other, were had, and the following testimony and proof, and none other, was had upon the trial of said cause.

Te-We-Talkt was called and sworn as a witness on behalf of the United States, and upon direct examination by the United States Attorney was asked the following question:

"You are a Nez Perce Indian, living on the Nez Perce Indian Reservation?"

50 Which question was then and there objected to by the counsel for the defendant, for the reason that the indictment does not state facts sufficient to constitute any public offense nor any offense against any law of the United States, and particularly that the said indictment does not allege that any liquor was introduced into the Indian country, or upon any Indian allotment from any place without such Indian country or without such Indian allotment; and further, that the facts stated in said indictment do not establish any violation of any law of the United States, and particularly do not establish a violation of section 2139 of the Revised Statutes, as amended by 29 Statute at Large, page 506, and that the said statute, inasfar as it assumes to publish as an offense against the laws of the United States the bringing of liquor into any territory within the limits of this State not within the Indian country and not reserved by the Government for the exclusive use of the Indians is unconstitutional and void, and for the further reason that this court has no jurisdiction over the subject-matter of the offense charged or attempted to be alleged in the indictment, nor over the person of this defendant, for the reasons above stated.

Which objection was then and there overruled by the court, and the witness permitted to answer said question, to which ruling and decision of the court the defendant, by his said counsel, then and there excepted, which exception was at the time allowed by the court.

Whereupon the witness, in answer to said question, testified further as follows: "Yes, sir."

And thereupon the said witness, upon direct examination by the United States attorney, further testified as follows:

"I got the bottle of whiskey that Mr. Mattoon, the agent, took away from me on the 13th of March, from George Dick. I bought it at Cul-

51 desac. Dick, the defendant, gave it to me. The bottle now shown me is the bottle. The agent took this away from me. Dick paid for this whiskey. I and Walter Slominee furnished the money. I furnished four dollars and Walter Slominee furnished fifty cents. Dick got this whiskey at the old man's shop. He stepped in and got it and brought it out. George Dick went in and got this whiskey and brought it out and give it to me.

Be it further remembered that thereupon the said witness upon cross-examination by Mr. Fogg, counsel for the defendant, further testified as follows:

"George Dick got this whiskey at Culdesac, the village of Culdesac, Nez Perce County. He gave me this whiskey, right there within five steps of the place, right in the village of Culdesac. At that time I had an allotment and trust patent. George Dick is a Umatilla Indian. He has an allotment of land in severalty. All this occurred right there near the door where he bought the whiskey. All these transactions were within the town of Culdesac."

Thereupon the said witness was excused.

Be it further remembered that thereupon F. G. Mattoon was called, sworn, and examined as a witness in behalf of the prosecution, and upon direct examination by the United States Attorney testified as follows:

"I am superintendent and acting agent of the Nez Perce Indians, and was such in the month of March last. As such agent I took this bottle away from Te-We-Talkt. This bottle contains about one quart of whiskey. The village of Culdesac is in Nez Perce County, State of Idaho."

Be it further remembered that thereupon, on cross-examination by Mr.

52 Fogg, counsel for the defendant, the said witness further testified:

"Te-We-Talkt, Watch-le-Loome, Johnnie Yo-Gay-Nil are all Indians that have taken their allotments of land in severalty and had trust patents from the Government therefor at the time I speak of. The village of Culdesac is a village organized under the laws of the State of Idaho as a municipal corporation."

Be it further remembered that thereupon the following question was asked the said witness upon cross-examination by Mr. Fogg, of counsel for the said defendant:

"Is any portion of the territory included within the corporate limits of the village of Culdesac under your supervision as Indian Superintendent?"

Which question was objected to by the United States Attorney as incompetent, irrelevant and immaterial, and calling for a question of law. Which objection was then and there sustained by the court, to which ruling and decision of the court the defendant, by his said counsel, then and there excepted, which exception was at the time allowed by the court.

Be it further remembered that thereupon the said witness, upon further cross-examination, testified as follows:

"I do not know whether or not there are any Indians within the corporate limits of the village of Culdesac. There are about sixteen hundred Indians upon the reservation at the present time. Practically all the Indians own lands in severalty."

Be it further remembered that thereupon the said witness was asked the

following question upon cross-examination by Mr. Fogg, of counsel for the defendant:

“As a matter of fact, Mr. Mattoon, do not your duties at the present time as Indian Agent consist of representing the Government in  
53 reference to the land and property of the Indians, and some other duties in reference to Indian Schools?”

Which question was objected to by the United States attorney upon the ground that the law defines the duties of the superintendent, and that this is a question for legal decision, which objection was sustained by the court, and the witness not permitted to answer the same. To which ruling and decision of the court the defendant, by his said counsel, then and there excepted, which exception was at the time allowed by the court.

Be it further remembered that thereupon the said witness, upon further cross-examination, testified as follows:

“I do not know of any reservation or any part of the reservation used for Government purposes or for Indian purposes within the boundaries of the village of Culdesac. I have no idea there is any such reservation within such village. Culdesac is seven or eight miles from the exterior boundaries of the Indian school reservation.”

Whereupon said witness was excused.

Be it further remembered that thereupon Watch-le-Amnee, a witness duly sworn and examined in behalf of the United States, testified as follows:

“The defendant, George Dick, purchased whiskey at Culdesac about the 13th day of March last, five bottles, and gave the whiskey to Te-We-Talkt and other Indians at Culdesac. The defendant had nothing to do with the whiskey after leaving Culdesac.”

Whereupon said witness was excused.

Be it further remembered that Johnnie Yo-Gay-Nil, a witness produced, sworn, and examined on behalf of the United States, testified as follows:

“I saw George Dick give this bottle of whiskey to Te-We-  
54 Talkt at Culdesac on the 13th of March. Nothing happened in relation to this whiskey outside of the village of Culdesac.”

Whereupon said witness was excused.

Be it further remembered that thereupon Edward Raboin, a witness produced, sworn, and examined in behalf of the United States, testified as follows:

“The defendant, George Dick, at the preliminary examination before Commissioner O'Neill at Lewiston, admitted and testified that he bought liquor at Culdesac at the time charged in the indictment, and that he and three other Indians drank up two bottles of liquor.”

Be it further remembered that thereupon the bottle testified to by the witness was offered and received in evidence, together with the contents, as U. S. Exhibit No. 1.

Witness excused.

Be it further remembered that thereupon the defendant, George Dick, was called as a witness in his own behalf, upon direct examination by Mr. Fogg, testified as follows:

“I am a Umatilla Indian. I have an allotment and a trust patent



therefor on the Umatilla Reservation at and before the time that the witness testified that I was at Culdesac. Had my trust patent for about three years."

Thereupon said witness was excused.

Be it further remembered that at the close of the testimony and proof in the said cause, and before the said cause was submitted to the jury, the defendant, by his said attorneys, in writing, as required by the rules of said court, duly presented to said court specific requests for instruction, numbered 1 to 3, inclusive, which said requests for instructions to the jury are as follows:

55 "In the District Court of the United States, within and for the District of Idaho, Northern Division, May term, 1905.

United States of America vs. George Dick. Request for instructions.

"The defendant requests the court to give severally and respectively the following instructions to the jury:

1.

(See instructions in judgment roll.)

That thereupon the court refused to give any or either of said instructions so requested by the defendant, and thereupon instructed and charged the jury as follows:

"Gentlemen: The only instruction I need to give you is this: If you find that the defendant had this bottle of whiskey upon him within the limits of what is known as Nez Perce Indian Reservation, then you are to find him guilty of this charge. The charge, of course, is for introducing liquor into the reservation, but I instruct you that having it in his possession upon the reservation is conclusive. When and where he bought it is immaterial; that it was in his possession within the limits of the Indian reservation is sufficient. I instruct you as a matter of fact, that Culdesac is within the limits of the reservation."

Be it further remembered that immediately after the giving of the said instructions and charge to the jury by the court, and immediately after the denying by the court of the defendant's requests to give either or any of the instructions so presented and requested in writing by the defendant, and in the presence of the jury and before the jury had retired to consider their verdict, the defendant excepted to the refusal of the court to give the instructions so requested, and the instructions given the jury by the court upon its own motion, specifically, as follows:

56 "The defendant excepts to the refusal of the court to grant the request for instructions numbered 1, 2, and 3, respectively, and specifically excepts to the refusal to grant each of said instructions. The defendant further excepts to the instructions given to the jury upon the court's own motion, particularly to that part of the instructions wherein the court instructs the jury that the village of Culdesac is a part of the Indian reservation, and substantially instructs the jury that the village of Culdesac is Indian country or Indian allotment within the meaning of the statute under which the indictment is laid. And further specifically objects to that portion of the instruction given by the court upon its own motion wherein

the court instructs the jury that 'if they find from the evidence that there was liquor found in the possession of the defendant, that that is conclusive presumption that he is "guilty" of introducing liquor upon the reservation.' Denying to the defendant a presumption of innocence and denying to the defendant the right to prove his innocence of the charge against him."

All of which exceptions were by the court at the time allowed and directed to be made a part of the record.

Be it further remembered that thereupon the jury retired by direction of the court to consider their verdict, and after being absent for a  
57 time returned in court on the said 15th day of May, 1905, their verdict being as follows:

"In the District Court of the United States in and for the District of Idaho. The United States of America vs. George Dick. Verdict: We, the jury sworn and empanelled in the above-entitled cause, find the defendant guilty as charged in said indictment.

"C. A. HAGAN, *Foreman*.

"(Endorsed:) Filed May 15, 1905. A. L. Richardson, clerk."

Be it further remembered that thereupon, in open court and before the jury was discharged, the defendant, by his counsel, excepted to the said verdict and moved that the same be set aside, which exception was at the time allowed by the court and made a part of the record herein.

Be it further remembered that thereafter, and on the 16th day of May, 1905, and before judgment was passed by the court upon the said verdict of guilty and conviction of the said offense so charged in said indictment, the said defendant, by his said counsel, made and filed in said court a motion in arrest of judgment, which said motion is as follows:

"In the District Court of the United States in and for the District of Idaho. The United States of America vs. George Dick. Motion in arrest of judgment.

"Comes now the defendant, George Dick, and moves the court that judgment be arrested and sentence be not passed in this action upon his conviction by the verdict of the jury, under his plea of "Not guilty" herein, for the reasons:

"1st. That the indictment herein does not state facts sufficient  
58 to constitute a public offense, nor does it state facts sufficient to constitute any offense or any violation of any law of the United States.

"2nd. That this court has no jurisdiction over the person of this defendant, nor over the offense stated or attempted to be stated in the said indictment, for the reason that it does not appear from the said indictment that the place where the said offense charged to have been committed is within the jurisdiction of the United States, but to the contrary it affirmatively appears from said indictment that the place where said offense is alleged to have been committed is within the jurisdiction of the State of Idaho, and further, that the law under which this defendant was indicted and arraigned is unconstitutional and void, for the reason that the Congress of the United States has no power to pass a law providing for police regulation over the matters and things alleged in said indict-



ment within the territory of the State of Idaho, or over the place where said offense is said to have been committed.

"Wherefore the defendant prays that judgment upon the said verdict and conviction be arrested and that he be discharged.

"Dated this 16th day of May, A. D. 1905.

"F. E. FOGG and GEO. W. TANNAHILL,  
*"Attorneys for Defendant.*

"(Endorsed:) Filed May 16th, 1905. A. L. Richardson, clerk."

Be it further remembered that on the day last aforesaid the said motion was duly submitted to the court for its decision thereon, and the court, after hearing argument thereon and being fully advised, overruled and denied said motion in arrest of judgment, to which ruling of the court the defendant, by his counsel, then and there duly excepted, which  
 59 exception was allowed by the court, which ruling and decision of the court the defendant assigns as error.

Be it further remembered that thereafter, and on the 16th day of May, A. D. 1905, the court rendered its judgment and sentence upon said verdict so convicting the said defendant of the said offense set forth in the indictment herein, by which it was ordered and adjudged that the said defendant be imprisoned in the Idaho State penitentiary at Boise, State of Idaho, for the term of one year and ten days, which judgment is filed in this court in this action and of record herein.

Be it further remembered that thereafter, and on the 24th day of May, and within ten days after the verdict herein, the said defendant, by his attorneys, made and filed in this action and served upon the United States district attorney a notice of intention to move for a new trial, which said notice is as follows:

"In the District Court of the United States in and for the District of Idaho, Northern Division, May term, 1905. The United States of America, plaintiff, vs. George Dick, defendant. Notice of intention to move for a new trial.

"To the plaintiff above named and to N. M. Ruick, district attorney, and by virtue thereof, attorney for plaintiff, and to each of you.

"Take notice that the defendant above named intends to and will move the above-entitled court to vacate and set aside the verdict rendered in the above-entitled cause, on the 15th day of May, A. D. 1905, and

to grant a new trial of said cause upon the following grounds, to wit:

60 "1. Insufficiency of the evidence to justify the verdict and that the same is against law.

"2. Errors of law occurring at the trial and excepted to by the defendant.

"3. Errors of law occurring in the instructions of the court, wherein and whereby the court failed to instruct the jury as to the law, depriving the defendant of having presented to the jury all of the issues in the case, and thereby preventing the defendant from having a fair and impartial trial.

"4. Errors of law in overruling the defendant's demurrer to the indictment herein, and overruling the defendant's motion in arrest of judgment, and in sentencing the defendant upon the indictment and the verdict returned and filed in said cause.

"Said motion will be made and based upon a statement of the case to be hereafter prepared and served, settled and filed, upon the indictment heretofore filed herein, and upon the defendant's motion in arrest of judgment, the minutes of the clerk, and the files and records in the above-entitled cause.

"F. E. FOGG and GEO. W. TANNAHILL,  
*"Attorneys for Defendant, residing at Lewiston, Idaho.*

"(Endorsed:) Filed May 24th, 1905. A. L. Richardson, clerk."

Be it further remembered that thereafter, and on the said 24th day of May, 1905, the said defendant, by his said attorneys, made and filed in this court and served upon the United States attorney his motion for a new trial, which said motion is as follows:

61 "In the District Court of the United States in and for the District of Idaho, Northern Division, May term, 1905. The United States of America, plaintiff, vs. George Dick, defendant. Motion for a new trial.

"Comes now the defendant above named, pursuant to notice heretofore given, and moves the court that the verdict rendered in the above-entitled cause on May 15th, 1905, be set aside and vacated and a new trial granted therein upon the following grounds:

"1. Insufficiency of the evidence to justify the verdict and that the same is against law.

"2. Errors of law occurring at the trial and excepted to by the defendant.

"3. Errors of law occurring in the instructions of the court wherein and whereby the court failed to instruct the jury as to the law, depriving the defendant of having presented to the jury all of the issues in the case, and thereby preventing the defendant from having a fair and impartial trial.

"4. Errors of law in overruling the defendant's demurrer to the indictment herein, and in overruling the defendant's motion in arrest of judgment, and in sentencing the defendant upon the indictment and the verdict returned and filed in said cause.

"This motion will be made and based upon a statement of the case to be hereafter prepared and served, the indictment heretofore filed herein, defendant's motion in arrest of judgment, the minutes of the clerk, and the files and records in the above-entitled cause.

"F. E. FOGG and

"GEO. W. TANNAHILL,

*"Attorneys for Defendant, residing at Lewiston, Idaho."*

(Endorsed:) "Filed May 24th, 1905. A. L. Richardson, clerk."

62 Be it further remembered, that at the same term of this court at which the trial was had and judgment rendered herein, and on the 16th day of May, 1905, the court made the following order:

"In the District Court of the United States in and for the District of Idaho, Northern Division. The United States of America vs. George Dick. Order extending time to settle bill of exceptions.

"It appearing to the court that additional time is necessary for the

defendant to prepare and present a bill of exceptions during the trial for settlement :

"It is therefore ordered that the defendant's time for preparing, presenting, and serving upon the district attorney a bill of exceptions thereof, upon the trial of the cause, including exceptions taken to the overruling of the demurrer and exceptions to the order of the court overruling and denying defendant's motion in arrest of judgment and all the exceptions taken upon the trial, and the admission and rejection of evidence, and to the instructions of the court, be extended for sixty days from the date of this order.

"Done in open court this 16th day of May, A. D. 1905.

"JAS. H. BEATTY, *District Judge.*"

(Endorsed:) "Filed May 16th, 1905. A. L. Richardson, clerk."

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*Specifications of error.*

Comes now the defendant, George Dick, and assigns and specifies the following grounds of error in the proceedings herein, upon which he will rely for the hearing of the said motion for a new trial, and upon appeal from the judgment herein, or upon appeal from the order, denying his said motion for a new trial, should the same be denied, all of which said errors are based upon exceptions duly taken and allowed, as hereinbefore set forth.

I.

The court erred in overruling defendant's demurrer to the indictment herein severally upon all the grounds stated in the said demurrer.

II.

The court erred in overruling defendant's objection to the following question asked the witness Te-we-Talkt on direct examination: "You are a Nez Perce Indian living on the Nez Perce Indian Reservation?" and in permitting said witness to answer said question, and in admitting any evidence in said indictment, upon all the grounds severally stated in said objection.

III.

The court erred in sustaining the objection of the United States attorney to the following question asked the witness F. G. Mattoon, on cross-examination: "Is any portion of the territory included within the corporal limits of the village of Culsesac under your supervision as Indian superintendent?"

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IV.

The court erred in sustaining the objection of the United States attorney to the following question asked the witness F. G. Mattoon, on cross-examination: "As a matter of fact, Mr. Mattoon, do not your duties at the present time as Indian agent consist in representing the Government

in reference to the land and property of the Indians, and some other duties in reference to Indian schools?<sup>65</sup>

#### V.

The court erred in refusing and failing to give each of the instructions requested by the defendant, numbered 1 to 3, inclusive, respectively.

#### VI.

The court erred in instructing the jury as a matter of law that the village of Culdesac is a part of the Indian reservation, and in substantially instructing the jury that the village of Culdesac is Indian country, within the meaning of the statute under which the indictment was laid.

#### VII.

The court erred in instructing the jury as follows: "That I instruct you that having it in his possession upon the reservation is conclusive. When and where he bought it was immaterial. That it was in his possession within the limits of the Indian reservation is sufficient," said instruction denying to the defendant the presumption of innocence, and denying to the defendant the right to prove his innocence of the charge against him.

#### VIII.

The court erred in rendering judgment upon the said verdict, 65 because the said verdict is contrary to law and the evidence, and the defendant now specified the following particulars in which the evidence is insufficient to support the verdict, judgment, and sentence:

1. There is no evidence whatever that the defendant introduced the liquor mentioned in the indictment, or any liquor into the Indian country, or upon an Indian allotment, or upon any other place prohibited by the statute.

2. There is no evidence that the defendant introduced the said whiskey from any point without to any point within the boundaries of the Nez Perce Reservation.

3. The evidence affirmatively and without conflict shows that the defendant did not introduce the whiskey into the Indian country, but that he bought it within a few feet of the place where he delivered it to the Indian, Te-we-Talkt, and others.

4. The evidence affirmatively and without conflict shows that the defendant exercised no dominion or control, directly or indirectly, over the said whiskey, except within the corporate limits of the village of Culdesac, and that he did not exercise any control over the said whiskey at any place where the Government of the United States had any jurisdiction for the purpose of police control, but to the contrary that the village of Culdesac is a place exclusively within the sovereignty of the State of Idaho for all purposes of police control.

## IX.

The court erred in overruling and denying defendant's motion in arrest of judgment, and in passing judgment and sentence upon the defendant upon all grounds severally stated in said motion.

66       Wherefore comes now the defendant, by his counsel, and presents this, his bill of exceptions and statement of case on motion for new trial, and statement of case on appeal to the Circuit Court of Appeals and statement of case on appeal from order denying said motion for a new trial, should the same be denied, and asks that the same be settled and certified by the honorable district judge and filed in this action as such.

F. E. FOGG and  
GEO. W. TANNABILL,  
*Attorneys for Defendant.*

Due service of the above and foregoing bill of exceptions and statement of case is hereby acknowledged and receipt of copy admitted this 15th day of July, 1905.

And it is further stipulated and agreed that the same may be forthwith and without further notice presented to the hon. district judge for settlement.

N. M. RUCK,  
*U. S. District Attorney, Boise, Idaho.*

The foregoing bill of exceptions and statement of case on motion for a new trial having been prepared, served, and presented for settlement within the time granted by law, the rules of this court and the order of the hon. judge in the above-entitled court, and the same having been examined and no amendments having been proposed thereto, and the hon. United States attorney consenting thereto, the same is hereby settled, and it is hereby certified that the foregoing bill of exceptions and statement of case is true and correct.

Done at Chambers this 21st day of July, 1905.

JAS. H. BEATTY,  
*Judge of the U. S. District Court for the District of Idaho.*

67       (Endorsed:) No. 565. In the U. S. District Court for the District of Idaho, Northern Division, Mary term, 1905. The United States of America, plaintiff, vs. George Dick, defendant. Bill of exceptions and statement of case. Filed July 24th, 1905. A. L. Richardson, clerk. F. E. Fogg and Geo. W. Tannabill, attorneys for defendant, residing at Lewiston, Idaho.

In the District Court of the United States for the District of Idaho.

THE UNITED STATES OF AMERICA, PLAINTIFF, }  
*vs.*  
 H. F. SCHISSLER ET AL., DEFENDANTS. }

N. M. Ruick, U. S. attorney for plaintiff.  
 Fogg & Tannahill, attorneys for defendants.

BEATTY, *District Judge*:

Under the demurrer to the indictment it is claimed that, notwithstanding the treaty or agreement entered into between the Government and the Nez Perce tribe of Indians on May 1, 1893 (28 Stats., 326), the statutes concerning the introduction of intoxicating liquors into the Indian reservation and the sale thereof to Indians belonging to such reservation, are not applicable to the Nez Perce Indian Reservation; and In re Heff, 197 U. S., 488, is relied upon to support the demurrer. That decision is based upon an act providing for the allotment of lands in severalty to the Indians on the Indian reservations, approved February 8, 1887 (24 Stats., 388). It authorized the President to procure the survey and allotment of the lands in severalty to the Indians for issuing patents therefor to them to be held in trust by the Government for twenty-five years, when final patent shall be issued to

the allottees or their heirs, and that upon the completion of  
 69 the allotments and the patenting of the lands to the allottees, the latter shall be subject to all the laws, civil and criminal, of the State in which they reside; and that any Indian who has taken up "his resident separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens." In construing this act the Supreme Court held that, when under its provisions, an Indian allottee of Indian lands became subject to the laws of the State in which he resided, and a citizen of the United States, he, like all other citizens, ceased to be a ward of the nation, and was subject to its laws just as other citizens were, and not otherwise; and as a consequence, any one selling liquor to him was not subject to the laws concerning the sale of intoxicants to Indians.

The demurrer in this case must be considered in connection with the agreement with the Nez Perce Indians above referred to. This agreement, after referring to the said act of 1887 as authority for negotiating with the Nez Perce Indians for the cession of their surplus lands, recites that in pursuance of the provisions of said act the agreement is made, which, after providing for the cession of the lands, the consideration and payments therefor, and other matters, provides as follows:

"Article IX. It is further agreed that the lands by this agreement ceded, those retained, and those allotted to the said Nez Perce Indians, shall be subject, for a period of twenty-five years, to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the Nez Perce Indian allottees, whether under the care

of an Indian agent or not, shall, for a like period, be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians."

70 Such are the only provisions of this agreement possibly bearing upon the question at issue, and there are no provisions placing such Indians under the laws of the State or making them citizens of the United States. If they are subject to such laws or have such rights of citizenship, it must be by virtue of the act of 1887 and other acts. This agreement was "accepted, ratified, and confirmed" by Congress, which gives its provisions the same effect as any other law enacted by that body. While, as stated, this agreement recites that it is made in pursuance of the provisions of the other act, it does not follow that all of them are adopted. That act is referred to as the general authority for negotiating with the Indians for the cession of their lands, in pursuance of which this agreement is made. But it must result that any portions of such act which are in conflict with the agreement and later law must yield to it. It may be conceded that the conclusions of the court in the cited case concerning the citizenship of Indians and their exemption from control of United States police laws and regulations, would apply also to these Nez Perce Indians, if there is no conflict between the acts referred to. While this later agreement or act makes no provision for the citizenship of such Indians, or for their control by such laws, it may still be conceded that the provisions of the other act in such matters would apply to them if their logical results, as construed by said court, would not bring them in conflict with the later law; but this later law, on said agreement, does provide unequivocally that all the lands within this Nez Perce Reservation shall be subject for twenty-five years to all the United States laws regulating the introduction of intoxicants thereon, and that all the Indians allottees of such reservation,

71 whether under the care of an agent or not, shall for a like period be subject to all such laws prohibiting the disposition of intoxicants to Indians. This provision is too plain for doubt, and it can not be made clearer by discussion. It leaves the entire reservation and all the Indian allottees thereof for twenty-five years from May 1, 1893, subject to all the United States laws prohibiting the introduction of intoxicants into the reservation or the disposition thereof to the Indians. If, now, this is inconsistent with those provisions of the former act under which the Supreme Court has held that Indian allottees are entitled to citizenship, and are not subject to the laws concerning intoxicants, it must follow that these provisions of the act of 1887 are not applicable to the Nez Perce Indians, and that they are neither citizens nor subject to the laws of the State, but are still the wards of the nation, at least so far as concerns the laws regulating the sale of intoxicants; but whether that result must follow, or whatever the result, it can not be conceded that this Article IX of the agreement is not to be enforced to its full letter and intent. It was a solemn agreement entered into between the Government and these Indians, who are far above the average Indians in intelligence, and many of whom have had long Christian training and who know the evils of the liquor traffic upon their race. It is well understood that this provision of the treaty or agreement was especially insisted upon by them for the protection of their people.



For them they desired and asked the intervention of the strong arm of that Government which they with unfeigned simplicity rely upon, as the child upon its father. I can not think that this provision of a solemn compact, intended to shelter from debauch and destruction a subjected

and dependent people, will be so emasculated by judicial construction as to turn loose upon them a vampire class, totally reckless of the Indians' welfare of law and of society. Such a result can not be made to appear to the untutored savage as consistent with our contract with them, or with honor. I feel no hesitation in holding that this agreement with the Indians must be enforced, and that this conclusion is not in conflict with the ruling cited by the Supreme Court, in which was not involved any similar statute.

The laws applicable to intoxicants in the Nez Perce Reservation are still valid, and will be enforced by the court as they have been, until it is overruled by some controlling court. The demurrer is overruled.

Note: This ruling and opinion shall be considered as made in the other like cases wherein a similar demurrer was overruled.

Dated May 26th, 1905.

(Endorsed:) No. 565. U. S. District Court, Northern Division, District of Idaho. The United States vs. H. F. Schissler et al. Opinion on demurrer. Filed Aug. 1st, 1905. A. L. Richardson, clerk.

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*Order denying motion for a new trial.*

In the United States District Court for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,	} Order denying motion for new trial.
<i>vs.</i>	
GEORGE DICK, DEFENDANT.	

This cause came on to be heard the 14th day of August, A. D. 1905, pursuant to notice heretofore given, upon the defendant's motion for a new trial herein; Geo. W. Tannahill and F. E. Fogg, esqrs., appearing in support of said motion and N. M. Ruick, United States district attorney for the Northern Division, District of Idaho, appearing in opposition thereto.

After hearing the argument of the respective counsel and having duly considered the same, being fully advised in the premises the court orders that said motion be and the same hereby is overruled and denied.

Now, therefore, by reason of the law and the premises aforesaid it is ordered that said motion for a new trial be, and the same hereby is, overruled and denied, to which the defendant excepted, and exception is hereby settled and allowed.

Done at chambers this 14th day of August, A. D. 1905.

JAS. H. BEATTY,  
*United States District Judge for the Northern  
 Division, District of Idaho.*

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(Endorsed:) No. 565. In the United States District Court, District of Idaho, Northern Division. United States of America, plaintiff, vs. George Dick, defendant. Order denying motion for a new trial. Filed Aug. 15, 1905. A. L. Richardson, clerk.



75 In the United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION }  
of George Dick for a writ of habeas cor- } Certiorari.  
pus and a writ of certiorari.

The President of the United States to the United States District Court for the District of Idaho, greeting:

Whereas it has been made manifest to our United States Circuit Court of Appeals for the Ninth Circuit by the verified petition of George Dick, the party beneficially interested, that in a certain action pending before you, against the said George Dick in the suit of the United States of America, plaintiff, vs. George Dick, defendant, you, exercising judicial functions, have exceeded your jurisdiction, and being therefore willing to be certified of the said action or proceedings.

We therefore command you that you certify and send to our said United States Circuit Court of Appeals for the Ninth Circuit, at Portland, in the State of Oregon, by or before the eighteen (18th) day of September, A. D. 1905, annexed to the writ a transcript of the record and proceedings in the action aforesaid, with all things touching the same as fully and entirely as it remains before you, by whatsoever names the parties may be called therein, that the same may be reviewed by our said United States Circuit Court of Appeals, and that our said United States Circuit Court of Appeals may further cause to be done thereupon what it may appear of right ought to be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court of Appeals, at the city of Seattle, Washington, this eleventh day of September, A. D. 1905.

[SEAL.]

FRANK D. MONCKTON, *Clerk.*

By MEREDITH SAWYER, *Deputy Clerk.*

(Endorsed:) Certiorari. Filed September 14, 1905. A. L. Richardson, clerk U. S. District Court, District of Idaho.

77 *Clerk's certificate.*

In the District Court of the United States within and for the District of Idaho.

THE UNITED STATES OF AMERICA, PLAINTIFF, }  
vs. }  
GEORGE DICK, DEFENDANT.

I, A. L. Richardson, clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 59, inclusive, to be a full, true, and correct copy of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein, and return to the annexed writ of certiorari.

Witness my hand and the seal of said district court affixed at Boise, Idaho, this 14th day of September, 1905.

[SEAL.]

A. L. RICHARDSON, *Clerk.*

(Endorsed:) No. 1236. United States Circuit Court of Appeals for the Ninth Circuit. In re George Dick. Application for a writ of habeas corpus & writ of certiorari. Return to writ of certiorari. Filed Sep. 15, 1905. Frank D. Monckton, clerk, by Meredith Sawyer, deputy clerk.

78 *Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.*

79 At a stated term, to wit: The September, 1905, term of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room in the city of Seattle, in the State of Washington, on Monday, the eleventh day of September, in the year of our Lord one thousand nine hundred and five.

Present: Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } No. 1236.  
and a writ of certiorari. }

Ordered, application for a writ of habeas corpus and for a writ of certiorari presented by Mr. George W. Tannahill, on behalf of the petitioner, and argued and submitted to the court for consideration and decision.

Whereupon, on consideration whereof, ordered, writ of certiorari, issued, directed to the honorable the United States District Court for the district of Idaho, returnable before this court at the city of Portland, in the State of Oregon, by or before the eighteenth instant, and requiring the said District Court to certify to this court a transcript of the record and proceedings in the suit of The United States vs. George Dick.

80 At a stated term, to wit: The September, 1905, term of the United States Circuit Court of Appeals for the Ninth Circuit, held in Chambers in the city of Portland, in the State of Oregon, on Tuesday, the nineteenth day of September, in the year of our Lord one thousand nine hundred and five.

Present: Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } No. 1236.  
and a writ of certiorari. }

Ordered, matter presented and argued by Mr. F. E. Fogg, on behalf of the petitioner, no one appearing at the argument on behalf of the respondent, and submitted to the court for consideration and decision.

81 In the United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF }  
George Dick, for a writ of habeas corpus } No. 1236.  
and a writ of certiorari. }

George W. Tannahill and F. E. Fogg, attorneys for petitioner; N. M. Ruick, U. S. attorney.

Before Gilbert, Ross, and Morrow, circuit judges.  
MORROW, circuit judge, delivered the opinion of the court:

The petitioner was convicted in the United States District Court for the Northern Division of Idaho at the May Term, 1905, upon an indictment charging him with the crime of introducing intoxicating liquors into the Indian country, to wit, into and upon the Nez Perce Reservation, in the county of Nez Perces, in the State of Idaho, in violation section 2139 of the Revised Statutes of the United States, as amended by the act of January 30, 1897. (29 Stats. 506.) The petition for the writ of habeas corpus and certiorari was presented to this court during its recent session in Seattle, and after consideration a writ of certiorari was directed to issue, returnable at Portland, to bring up a transcript of the record and proceedings in the case.

The petitioner challenges the jurisdiction of the trial court on the ground that the act of the petitioner which is made the basis of  
82 the charge, namely, that he introduced intoxicating liquors into the Indian country, was not committed in the Indian country, but in the village of Cul de Sac, a municipal corporation organized under the laws of the State of Idaho. The petitioner is a Umatilla Indian, who has received an allotment of land in severalty.

The act of January 30, 1897, provides as follows: "That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever, into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: Provided, however, that the person convicted shall be committed until fine and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempt-  
83 ing to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country, that the acts charged were done

under authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department." (29 Stats., 506.)

The act of February 8, 1887, authorized the President to allot lands in severalty to Indians on the various reservations whenever in his opinion any reservation or any part thereof would be advantageous for agriculture and grazing purposes. Section 6 of the act provided as follows: "That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, and every Indian in Indian Territory, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property." (24 Stats., 388.)

Pursuant to this act the President authorized negotiations with the Nez Perce Indians in Idaho for the cession to the United States of certain of their lands in that State, and thereupon an agreement was entered into between Commissioners of the United States appointed for that purpose and the principal men and other male adults of the tribe for such cession. This agreement was dated May 1, 1893. It provides in Article I for the cession, relinquishment, and conveyance to the United States by the Nez Perce Indians of all their claim, right, title, and interest in and to all the unallotted lands within the limits of the Nez Perce Reservation, saving and excepting certain described tracts of land which are retained by the Indians. It is provided in Article IX, as follows: "It is further agreed that the lands by this agreement ceded, those retained, and those allotted to the said Nez Perce Indians, shall be subject, for a period of twenty-five years, to all the laws of the United States prohibiting the introduction of intoxicants into the Indian country, and that the Nez Perce Indian allottees, whether under the care of an Indian agent or not, shall, for a like period, be subject to all the laws of the United States prohibiting the sale or other disposition of intoxicants to Indians." (28 Stats., 330.)

It is under the terms of this agreement contained in Article IX that the petitioner is charged with having introduced intoxicating liquors into the Indian country.

The village of Cul de Sac is located upon the land ceded by the Indians to the United States, about seven or eight miles from the exterior boundary of the Indian School Reservation, and no reservation or any part of a reservation used for Government purposes or for Indian pur-

poses is within the boundaries of such village. Prior to the transaction involved in this case the title to the lands upon which the village of Cul de Sac is located had passed from the United States by patent under the townsite laws to the probate judge of Nez Perce County, Idaho, in trust for the inhabitants of the village.

There is no question as to the plenary authority of Congress over the tribal relations of the Indians. Such authority has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the Government. *Lone Wolf v. Hitchcock*, 187 U. S., 565. But the question involved in the present case does not relate to the tribal affairs of the Nez Perce Indians. The question is, whether Congress can break up the tribal relations of these Indians, allot lands to the individual Indians in severalty, give them the benefit of and make them subject to the laws, both civil and criminal, of the State of Idaho, make them citizens of the United States and declare them entitled to the rights, privileges, and immunities of such citizens, open the lands which they have ceded to the United States to settlement under the land laws of the United States, provide for the conveyance of such lands to individuals and municipal corporations, and still retain over such lands the police power prescribed in Article IX of the agreement of May 1, 1893, with the Nez Perce Indians, providing that for a period of twenty-five years all the laws of the United States prohibiting the introduction of intoxicating liquors into the Indian country shall be applicable to such lands? We do not think that Congress can reserve or exercise such police power within the territorial limits of a State. The police power of the United States can only be exercised where the legislative authority of Congress excludes territorially all State legislation. *United States v. DeWitt*, 9 Wall., 41, 45; *Slaughter-House Cases*, 16 Wall., 36, 64.

The late case entitled "The Matter of Heff," 197 U. S., 505, was a petition to the Supreme Court of the United States for a writ of habeas corpus. The petitioner had been convicted of selling liquor to an Indian, a member of the Kickapoo tribe, who had received an allotment of a patent of land under the provisions of the act of February 8, 1887. It was claimed in that case, as in this, that this was in violation of the act of January 31, 1897. The Supreme Court, speaking of the limitation of the police power of the General Government in such a case, said: "In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this court is to preserve the balance between them, protecting each in the powers it possesses and preventing any trespass thereon by the other. The general police power is reserved to the States, subject, however, to the limitation that in its exercise the State may not trespass upon the rights and powers vested in the General Government. The regulation of the sale of intoxicating liquors is one of the most common and significant exercises of the police power. And so far as it is an exercise of the police power it is within the domain of State jurisdiction." The court says further: "We are of the opinion that when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal, of the State, it places him outside the reach of police

regulations on the part of Congress; that the emancipation from Federal control thus created can not be set aside at the instance of the Government without the consent of the individual Indian and the State, and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property." This was said with

respect to a sale of liquor to an Indian over whom it was said the  
 87 General Government had parted with its guardianship, and it was held that the court had no jurisdiction of the offense charged. In the present case the sale of liquor was made in a municipal territory clearly within the jurisdiction of the State and outside the jurisdiction of the United States. With respect to such a case the court, in the case of *Hoff*, *supra*, said: "It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one citizen of a State to another within the territorial limits of that State would be an invasion of the State's jurisdiction and could not be sustained, and it would be immaterial what the antecedent status of either buyer or seller was. There is in these police matters no such thing as a divided sovereignty. Jurisdiction is vested entirely in either the State or the nation, and not divided between the two." This statement of the law by the Supreme Court we think disposes of the present case.

It is urged on behalf of the United States that the protection of the Indians afforded by the agreement of May 1, 1893, is necessary to protect them from the deplorable consequences resulting from the liquor traffic; that the State does not assume to regulate such traffic in that territory, and that in default of a law prohibiting the sale of intoxicating liquors to these Indians their degradation and ruin will soon be complete. It is undoubtedly the duty of the white man to protect the Indian from this consuming vice, and there can be no question as to the necessity for prohibitory legislation in this regard. But the courts can not supply such legislation or enforce agreements beyond their jurisdiction. This argument should be addressed to the legislature of the State, which will undoubtedly perform its duty in this respect.

88 It follows that the District Court of Idaho did not have jurisdiction of the offense charged in the indictment, and therefore the petitioner is entitled to his discharge from imprisonment; and it is so ordered.

(Endorsed:) Opinion. Filed Oct. 2, 1905. F. D. Monekton, clerk.

89 United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF }  
 George Dick for a writ of habeas corpus } No. 1236.  
 and a writ of certiorari. }

*Judgment U. S. Circuit Court of Appeals.*

The petition in the above-entitled matter for a writ of habeas corpus and a writ of certiorari having been duly submitted to the court, and the petition for a writ of certiorari therein having been granted and a writ of certiorari having been issued, directed to the honorable the United States District Court for the District of Idaho, and requiring the



said District Court to certify to this court a transcript of the record and proceedings in the suit therein of the United States vs. George Dick, and the return to the said writ of certiorari having been filed, the matter was duly argued and submitted to the court for consideration and decision upon the said return and upon the briefs of counsel for the respective parties.

On consideration whereof, and the court being of the opinion that the United States District Court for the District of Idaho did not have jurisdiction of the offense charged in the indictment found against the petitioner in the suit of the United States vs. George Dick, it is ordered and adjudged that the petitioner, George Dick, be discharged from imprisonment.

(Endorsed:) Judgment. Filed and entered October 2, 1905. F. D. Monckton, clerk.

90 United States Circuit Court of Appeals for the Ninth Circuit,  
No. 1236.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } Petition for appeal.  
and a writ of certiorari. }

Comes now E. L. Whitney, warden of the Idaho State Penitentiary, appellant, by N. M. Ruick, United States attorney for the District of Idaho, and Edward E. Cushman, special assistant to the attorney-general, and conceiving himself aggrieved by the order and judgment entered herein on the 2nd day of October, 1905, in the above-entitled proceeding, doth hereby appeal from said order and judgment to the Supreme Court of the United States, and he prays that this his appeal may be allowed and that a transcript of the record and proceeding and papers upon which said order and judgment was made duly authenticated may be sent to the Supreme Court of the United States. That this appeal is taken by direction of the Attorney-General of the United States, that he therefor prays that execution of said order and judgment be stayed pending the final determination of the case on appeal.

N. M. RUICK,

*United States Attorney for District of Idaho.*

EDWARD E. CUSHMAN,

*Special Assistant to the Attorney-General and*

*Attorney for Appellant E. L. Whitney, 316*

*New Post-Office, San Francisco, California.*

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SAN FRANCISCO, CALIFORNIA,

*October 31st, 1905.*

And now, to wit, on October 31st, 1905, it is ordered that the appeal herein prayed for be allowed as prayed, and that execution be stayed as prayed. Bail fixed at \$1,000.

WM. W. MORROW,

*Circuit Judge, and one of the Judges of the Court of Appeals of the  
Ninth Circuit, who heard and decided the above-entitled cause.*

(Endorsed:) Petition for, and order allowing appeal, etc. Filed Oct. 31, 1905. F. D. Monckton, clerk.

92 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1236.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } Assignment of errors,  
and a writ of certiorari. }

Comes now the respondent herein, E. L. Whitney, warden, and complains and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

I.

That the court erred in its judgment herein of October 2nd, 1905.

II.

That the court erred in finding and adjudging that the petitioner, George Dick, was unlawfully restrained of his liberty and that he was entitled to be and adjudged to be discharged.

III.

That the court erred in finding and deciding that the District Court of Idaho did not have jurisdiction to punish the offense charged in the place where charged and proven to have been committed.

IV.

That the court erred in finding and deciding that the village of Cul de Sac was not Indian country within the act of January 30th, 1897, and other acts of Congress and treaties.

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V.

That the court erred in finding and deciding that the foregoing acts and laws were unconstitutional and void in undertaking to provide police regulation on the part of the United States at places entirely within the jurisdiction of the State of Idaho.

VI.

That the court erred in finding and deciding that the place where the offense mentioned in the indictment was charged and shown to have been committed was wholly within the police jurisdiction of the State of Idaho.

VII.

And the court erred in finding and deciding that there was no power in Congress to provide such or any police laws and regulations over lands and places within a State the title of which had passed from the Government by patent under the town-site laws of the United States.



## VIII.

That the court erred in finding and deciding that the place where the offense is charged and shown to have been committed was without the police jurisdiction of the United States and within the police jurisdiction of the State of Idaho.

## IX.

The court erred in finding and deciding that the United States and Congress had no power by law or treaty to retain police power and jurisdiction for any purpose over lands allotted, patented, or sold under the town-site or other laws.

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## X.

That the court erred in finding and deciding that the said E. L. Whitney, warden, had no authority to detain the said George Dick. And erred in deciding that the said District Court had no jurisdiction or authority to try the said George Dick for said offense, and further erred in discharging the said George Dick upon the return of the writ of habeas corpus herein.

Wherefore the said E. L. Whitney, warden, prays that the order and judgment of the said Circuit Court of Appeals for the Ninth Circuit be reversed, and that if the said George Dick shall have been discharged from custody he be remanded into the custody of your petitioner.

N. M. RUICK,

*United States Atty. for the District of Idaho and Atty. for Appellant.*

EDWARD E. CUSHMAN,

*Special Assistant to the Attorney-General.*

(Endorsed:) Assignment of errors. Filed Oct. 31, 1905. F. D. Menckton, clerk.

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In the United States Circuit Court of Appeals for the Ninth Circuit. September term, 1905.

IN THE MATTER OF THE APPLICATION OF }

George Dick for a writ of habeas corpus } Application.  
and writ of certiorari. }

Comes now the petitioner, George Dick, and makes application to the above-entitled court for an order requiring and directing E. L. Whitney, warden of the State penitentiary at Boise, Idaho, to forthwith discharge the said petitioner.

The petitioner further represents that on October 2, 1905, the above-entitled court made and rendered its decision upon the writ of habeas corpus and certiorari heretofore issued and ordered the said petitioner discharged, holding that the said United States Court for the District of Idaho had no jurisdiction to try or convict the said George Dick.

The petitioner therefore asks that an order be issued to the said E. L.

Whitney requiring and directing the said E. L. Whitney to forthwith release the petitioner from custody.

GEO. W. TANNAHILL and  
F. E. FOGG,

*Attorneys for Petitioner George Dick, residing at Lewiston, Idaho.*

(Endorsed:) Application for discharge of petitioner from custody.  
Filed Nov. 4, 1905. F. D. Monckton, clerk.

96 At a stated term, to wit, the October term, A. D. 1905, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court room, in the city and county of San Francisco, on Monday the sixth day of November, in the year of our Lord one thousand nine hundred and five.

Present: Honorable William B. Gilbert, circuit judge, Honorable Erskine M. Ross, circuit judge, Honorable Thomas P. Hawley, district judge.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } No. 1236.  
and writ of certiorari. }

The application of the petitioner, George Dick, for an order directing the discharge of the petitioner from custody having been presented to the court for consideration and decision, and Mr. Edward E. Cushman, special assistant to the United States Attorney-General, having been heard,

On consideration whereof, and the court being fully advised in the premises, it is ordered that the said application be, and hereby is, denied.

97 At a stated term, to wit, the October term, A. D. 1905, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court room, in the city and county of San Francisco, on Monday, the thirtieth day of October, in the year of our Lord one thousand nine hundred and five.

Present: Honorable William B. Gilbert, circuit judge, Honorable Erskine M. Ross, circuit judge, Honorable Thomas P. Hawley, district judge.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } No. 1236.  
and a writ of certiorari. }

Upon motion of Mr. Edward E. Cushman, special assistant to the United States Attorney-General, it is ordered that the mandate of this court in the above-entitled matter be, and hereby is, stayed for the period of thirty (30) days from date.

98 United States Circuit Court of Appeals for the Ninth Circuit.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } No. 1236.  
and a writ of certiorari. }

*Certificate of clerk U. S. Circuit Court of Appeals to transcript on appeal.*

I, Frank D. Monckton, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-seven (97) pages, numbered from one (1) to ninety-seven (97) inclusive, to be a true copy of the record and of the assignment of errors and of all proceedings had in the above-entitled matter in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed, as the same remain of record in my office, and that the same together constitute the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled matter.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 11th day of November, A. D. 1905.

[SEAL.]

F. D. MONCKTON, *Clerk.*

99 United States Circuit Court of Appeals for the Ninth Circuit.  
No. 1236.

IN THE MATTER OF THE APPLICATION OF }  
George Dick for a writ of habeas corpus } Citation.  
and a writ of certiorari. }

UNITED STATES OF AMERICA, *ss:*

*To George Dick, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 30th day of December, 1905, pursuant to an appeal filed in the clerk's office of the Circuit Court of Appeals for the Ninth Circuit, wherein E. L. Whitney, warden, is appellant, and was respondent below, and George Dick is respondent, and was petitioner below, to show cause, if any there be, why the order and judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 31st day of October, in the year of our Lord one thousand nine hundred and five.

[SEAL.]

WM. W. MORROW,  
*Circuit Judge.*

Service of the foregoing citation and the receipt of a copy thereof is hereby admitted this 4th day of November, 1905.

GEO. W. TAXNAHILL &  
F. E. FOOG,  
*Attorneys for George Dick, Petitioner.*

(Endorsed:) No. 1236. United States Circuit Court of Appeals for the Ninth Circuit. In the matter of the application of George Dick for a writ of habeas corpus and a writ of certiorari. Citation on appeal to Supreme Court U. S. Filed Nov. 9, 1905. F. B. Monekton, clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

(Indorsement on cover:) File No. 19,996. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 494. E. L. Whitney, warden of the Idaho State Penitentiary, appellant, vs. George Dick. Filed November 22d, 1905. File No. 19,996.

